



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Atlantic Ocean off Wallops Island and Chincoteague Inlet, Virginia; Danger Zone

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is amending an existing permanent danger zone in the waters of the Atlantic Ocean off Wallops Island and Chincoteague Inlet, Virginia. The National Aeronautics and Space Administration, Goddard Space Flight Center, Wallops Flight Facility flight range capabilities have been expanded to accommodate larger classes of orbital rockets. This amendment increases the permanent danger zone to a 30 nautical mile sector and is necessary to protect the public from hazards associated with rocket-launching operations.

DATES: *Effective Date:* [INSERT DATE ONE DAY AFTER PUBLICATION OF THE FEDERAL REGISTER]

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922, or Ms. Nancy Hankins, Corps of Engineers, Norfolk District, Regulatory Branch, at 757-201-6048.

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this regulatory action is to amend an existing danger zone to accommodate larger classes of orbital rockets. This amendment increases the permanent danger zone to a 30 nautical mile sector and is necessary to protect the public from hazards associated with rocket-launching operations.

The Corps authority to amend this restricted area is Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3).

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR Part 334 by establishing a new permanent danger zone, in the waters of the Atlantic Ocean off Wallops Island and Chincoteague Inlet, Virginia. The modification to the regulations is described below.

The proposed rule was published in the October 11, 2011, issue of the Federal Register (76 FR 62692), and its regulations.gov docket number is COE-2011-0019. There were two comments received in response to the proposed rule. First, we received a response from the Commonwealth of Virginia Department of Conservation and Recreation stating that they do not anticipate that the project will adversely impact natural resources. Second, we received comments from the Town of Chincoteague, Virginia informing us of their space tourism plan and requesting confirmation that their proposed tourist viewing areas would not be in conflict with the new danger zone. In

response, NASA met with the Town of Chincoteague and together they developed a communication plan that will ensure public safety during launching operations.

Procedural Requirements

a. Review under Executive Order 12866. This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act. This rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps determined that this regulation would have practically no economic impact on the public nor would it result in any anticipated navigational hazard or interference with existing waterway traffic. This regulation will have no significant economic impact on small entities.

c. Review under the National Environmental Policy Act. This rule will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment has been prepared and it may be reviewed at the district office listed at the end of the FOR FURTHER INFORMATION, CONTACT above.

d. Unfunded Mandates Act. This rule does not impose an enforceable duty on the private sector and, therefore, it is not a Federal private sector mandate and is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Reform Act. (Public Law 104-4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*) We have also found

under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Revise § 334.130 to read as follows:

§ 334.130 Atlantic Ocean off Wallops Island and Chincoteague Inlet, Va.; danger zone.

(a) The area. An area immediately behind and directly offshore from Wallops Island defined by lines drawn as follows: Beginning at latitude 37°53'00"N, longitude 75°29'48"W; thence to latitude 37°53'03"N, longitude 74°50'52"W; thence to latitude 37°38'28"N, longitude 74°51'48"W; thence to latitude 37°22'00"N, longitude 75°09'35"W; thence to latitude 37°19'11"N, longitude 75°30'00"W; thence to latitude 37°47'57"N, longitude 75°32'19"W; and thence to latitude 37°53'00"N, longitude 75°29'48"W.

(b) The regulations. (1) Persons and vessels shall only be prohibited from entering the area when launch operations are being conducted.

(2) In advance of scheduled launch operations which, in the opinion of the enforcing agency, may be dangerous to persons and watercraft, appropriate warnings will

be issued to navigation interests through official government and civilian channels or in such other manner as the District Engineer, U.S. Army Corps of Engineers, may direct. Such warnings will specify the location, time, and duration of operations, and give other pertinent information as may be required in the interests of safety. Announcement of area of closure will appear in the weekly "Notice to Mariners."

(3) The intent to conduct rocket-launching operations in the area shall also be indicated by visual signals consisting of a large orange-colored "blimp-shaped" balloon by day and a rotating alternately red and white beacon by night. The balloon shall be flown at latitude 37°50'38"N, longitude 75°28'47"W and the beacon shall be displayed about 200 feet above mean high water at latitude 37°50'16"N, longitude 75°29'07"W. The appropriate signals shall be displayed 30 minutes prior to rocket-launching time and shall remain displayed until the danger no longer exists.

(4) In addition to visual signals and prior to conducting launch operations, the area will be patrolled by aircraft or surface vessels and monitored by radars and cameras to ensure no persons or watercraft are within the danger zone or designated area of interest within the danger zone. Patrol aircraft and surface vessels are equipped with marine band radios and may attempt to hail watercraft and request that they leave the designated area and remain clear of the area at a safe distance until launch operations are complete, and launch will not occur until the designated area is clear. Patrol aircraft may also employ the method of warning known as "buzzing" which consists of low flight by the airplane and repeated opening and closing of the throttle. Surveillance vessels may

also come close to watercraft and employ flashing light to establish communications to indicate that the watercraft is entering the designated hazard area.

(5) Any watercraft being so warned shall immediately leave the designated area until the conclusion of launch operations, and shall remain at a distance to ensure that it will be safe from falling debris.

(6) Nothing in this regulation shall be intended to prevent commercial fishing or the lawful use of approved waterfowl hunting blinds along the shorelines of the Wallops Flight Facility at Wallops Island, Virginia, provided that all necessary licenses and permits have been obtained from the Virginia Marine Resources Commission, Virginia Department of Game and Inland Fisheries, and U.S. Fish and Wildlife Service. Commercial fishermen and waterfowl hunters must observe all warnings and range clearances during hazardous range operations.

(c) Enforcement. The regulations in this section shall be enforced by the Director, National Aeronautics and Space Administration, Goddard Space Flight Center, Wallops Flight Facility Wallops Island, Va., or such agencies as he or she may designate.

Dated: _October 2, 2012_

Approved: _____

James R. Hannon

Chief, Operations and Regulatory

Directorate of Civil Works

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